

## Message Text

CONFIDENTIAL

PAGE 01 USBERL 02038 01 OF 02 290917Z  
ACTION EUR-12

INFO OCT-01 ISO-00 CIAE-00 DODE-00 PM-05 H-01 INR-10  
L-03 NSAE-00 NSC-05 PA-01 SP-02 SS-15 ICA-11  
IO-13 ACDA-12 SMS-01 EB-08 /100 W  
-----001850 291012Z /12

R 290733Z AUG 78

FM USMISSION USBERLIN  
TO SECSTATE WASHDC 7563  
AMEMBASSY BONN  
INFO AMEMBASSY BERLIN  
AMEMBASSY LONDON  
AMEMBASSY MOSCOW  
AMEMBASSY PARIS  
USMISSION USNATO

C O N F I D E N T I A L SECTION 1 OF 2 USBERLIN 2038

E.O. 11652: XGDS-1  
TAGS: PGOV AKB  
SUBJECT: ALLIED REPLY TO SOVIET S-BAHN PROTEST

REF: USBER 1699

SUMMARY: FOLLOWING TELEGRAM REPORTS AN EXCHANGE OF STATEMENTS ABOUT RECENT ALLIED INSTRUCTIONS PERMITTING THE WEST BERLIN POLICE FREER ACCESS TO THE GDR-OPERATED S-BAHN AND REICHSBAHN FACILITIES IN WSB. PERTINENT TEXTS ARE ATTACHED. END SUMMARY.

1. ON AUGUST 25, U.S. MISSION OFFICER (SEMLER) DELIVERED REPLY TO SOVIET PROTEST OF JULY 13 (TEXT BELOW) CONCERNING ALLIED INSTRUCTIONS CONTAINED IN PUSA/L (78)3 PERMITTING WEST BERLIN POLICE FREER ACCESS TO GDR-OPERATED S-BAHN AND REICHSBAHN FACILITIES IN WSB.

2. SOVIET MINISTER KHOTULEV SAID HIS AUTHORITIES WOULD STUDY  
CONFIDENTIAL

CONFIDENTIAL

PAGE 02 USBERL 02038 01 OF 02 290917Z

ALLIED REPLY. HE REMARKED QUOTE YOU KNOW OUR LEGAL POSITION, WE KNO YOURS UNQUOTE. HE THEN INSISTED THAT WEST BERLIN POLICE HAVE NO RIGHT TO INTERFERE WITH THE S-BAHN AND REICHSBAN WHICH WERE GIVEN TO THE GDR BY THE SOVIET MILITARY ADMINISTRATION.

3. IN RESPONSE TO A POINT MADE BY KHOTULEV TO BRITISH

POLAD GLADSTONE ON JULY 20, MISOFF SAID THAT REICHSBAHN AND S-BAHN COMPLAINTS HAD LED TO A NUMBER OF SUCCESSFUL PROSECUTIONS IN WSB COURTS (33 DURING 1977). THE POLICE AND WSB OFFICIALS COULD WORK MORE EFFECTIVELY IF S-BAHN AND REICHSBAHN EMPLOYEES WOULD REPORT IMMEDIATELY CRIMINAL ACTIVITIES ON THESE FACILITIES. KHOTULEV AGREED WITH THIS POINT (MADE TO US FREQUENTLY BY THE SENAT) AND SAID HE WOULD TALK TO THE GDR AUTHORITIES. HE WAS IN FAVOR OF SUCH COOPERATION. MISOFF SAID ALLIES WERE NOT INTERESTED IN ANY "OFFICIAL" ARRANGEMENT, JUST DAY-TO-DAY COOPERATION. THE WEST BERLIN POLICE SIMPLY CANNOT TRACE SOME EVILDOER IF THEY ARE PROVIDED WITH THE FACTS ABOUT THE COMPLAINT ONLY EIGHT DAYS AFTER THE OFFENSE HAS BEEN COMMITTED.

4. TEXT OF SOVIET PROTEST OF JULY 13 FOLLOWS:

QUOTE

THE WEST BERLIN PRESS HAS REPORTED THAT THE MILITARY ADMINISTRATIONS OF THE THREE POWERS IN WEST BERLIN HAVE PUBLISHED AN ORDINANCE PERMITTING THE WEST BERLIN POLICE IN FUTURE TO CARRY OUT CONTROLS ON THE TERRITORY AND IN THE TRAINS OF THE STATE RAILWAYS OF THE GDR (QUOTE REICHSBAHN UNQUOTE) AND OF CITY ELECTRIC TRAINS (QUOTE S-BAHN UNQUOTE) IN WEST BERLIN.

IT IS QUITE CLEAR THAT THEIR ORDINANCE IS NOTHING  
CONFIDENTIAL

CONFIDENTIAL

PAGE 03 USBERL 02038 01 OF 02 290917Z

OTHER THAN AN ATTEMPT SERIOUSLY TO ENTERFERE BY THE WEST BERLIN SIDE IN THE RIGHTS AND COMPETENCES OF THE GERMAN DEMOCRATIC REPUBLIC WITH REGARD TO COMMUNICATIONS IN WEST BERLIN BELONGING TO IT IN ORDER TO CHANGE THE SITUATION LONG EXISTING IN THIS FIELD.

THE EMBASSY OF THE USSR IN THE GDR WISHES TO MAKE A STRONG PORTEST TO THE MILITARY ADMINISTRATIONS OF THE THREE POWERS AGAINST THE ARBITRARY ACTIONS, WHICH ARE, APART FROM TOHER CONSIDERATIONS, A DIRECT VIOLATION BY THE THREE POWERS OF THEIR OBLIGATIONS IN THE QUADRIPARTITE AGREEMENT OF 3 SEPTEMBER 1971, WITH REGARD TO THEIR RESPECTING THE EXISTING SITUATION AND NOT ALTERING IT UNILATERALLY. THE SOVIET EMBASSY NATURALLY CANNOT RECOGNISE THE ORDINANCE OF THE MILITARY ADMINISTRATION AS LEGAL AND INSIST ON ITS IMMEDIATE ABROGATION. THE EMBASSY IN THE MOST SERIOUS MANNER POSSIBLE WARNS THE WESTERN SIDE ABOUT THE IMPLEMENTATION OF THIS DECISION AND STATES THAT ALL RESPONSIBILITY FOR UNLAWFUL ACTIONS ARISING OUT OF IT, IF SUCH ACTIONS WILL STILL FOLLOW, WILL BE THE RESPONSIBILITY OF THE MILITARY ADMINISTRATIONS OF THE THREE WESTERN POWERS. UNQUOTE.

5. TEXT OF ALLIED REPLY HANDED OVER ON AUGUST 25 FOLLOWS:

QUOTE

I HAVE BEEN INSTRUCTED TO REPLY TO YOUR STATEMENT OF  
13 JULY IN WHICH YOU REFERRED TO THE RECENT PUBLICATION OF  
AND ORDINANCE PERMITTING THE POLICE IN THE WESTERN SECTORS  
OF BERLIN TO CARRY OUT CONTROLS OF THE REICHSBAHN AND  
S-BAHN.

CONFIDENTIAL

NNN

CONFIDENTIAL

PAGE 01 USBERL 02038 02 OF 02 290943Z

ACTION EUR-12

INFO OCT-01 ISO-00 CIAE-00 DODE-00 PM-05 H-01 INR-10

L-03 NSAE-00 NSC-05 PA-01 SP-02 SS-15 ICA-11

IO-13 ACDA-12 SMS-01 EB-08 /100 W

-----002032 291012Z /16

R 290733Z AUG 78

FM USMISSION USBERLIN

TO SECSTATE WASHDC 7564

AMEMBASSY BONN

INFO AMEMBASSY BERLIN

AMEMBASSY LONDON

AMEMBASSY MOSCOW

AMEMBASSY PARIS

USMISSION USNATO

C O N F I D E N T I A L SECTION 2 OF 2 USBERLIN 2038

NO SUCH ORDINANCE HAS BEEN ISSUED. HOWEVER, UNDER  
THE ORDINANCE CONCERNING CONSTRUCTION AND OPERATION OF  
RAILWAYS OF 17 JULY 1928 AND ORDERS OF THE ALLIED KOMMANDA-  
TURA, IN PARTICULAR BK/O(62)6, THE POLICE IN THE WESTERN  
SECTORS HAVE LONG ENJOYED POWERS TO CARRY OUT NORMAL POLICE  
FUNCTIONS ON THE REICHSBAHN AND S-BAHN IN THESE SECTORS.

ALTHOUGH IN RECENT YEARS THE USE OF THESE POWERS HAS ONLY  
RARELY PROVED TO BE NECESSARY, THE RECENT MARKED INCREASE  
IN USE OF THE S-BAHN BY CRIMINALS (IN PARTICULAR FOR THE  
PURPOSE OF SMUGGLING DRUGS INTO THE WESTERN SECTORS) MADE  
IT NECESSARY FOR THE ALLIED KOMMANDATURA TO REAFFIRM THESE  
POWERS. AT THE SAME TIME THE ATTENTION OF THE POLICE  
AUTHORITIES HAS BEEN DRAWN TO THE RESTRICTIONS WHICH  
CONTINUE TO BE IMPOSED ON THEM BY BK/O(62)6.

SUCH ACTION BY THE ALLIED KOMMANDATURA CANNOT IN ANY WAY CONSTITUTE A CHANGE IN THE SITUATION EXISTING AT THE SIGNING OF THE QUADRIPARTITE AGREEMENT OF 3 SEPTEMBER 1971.

CONFIDENTIAL

CONFIDENTIAL

PAGE 02 USBERL 02038 02 OF 02 290943Z

THE POSITION OF THE THREE WESTERN GOVERNMENTS CONCERNING THE LAND OVER WHICH THE REICHSBAHN AND S-BAHN OPERATE IN THE WESTERN SECTORS OF BERLIN IS WELL KNOWN. ALTHOUGH THE ALLIED AUTHORITIES HAVE ALLOWED THE REICHSBAHNDIREKTION IN THE EASTERN SECTOR TO CONTINUE TO OPERATE THE REICHSBAHN AND S-BAHN IN THE WESTERN SECTORS, THIS IN NO WAY ALTERS THE FACT THAT ALL PROPERTY USED BY THE REICHSBAHN AND S-BAHN IN EACH OF THE WESTERN SECTORS REMAINS SUBJECT TO THE JURISDICTION AND CONTROL OF EACH SECTOR COMMANDANT BY VIRTUE OF HIS POWERS AS THE COMMANDER OF AN OCCUPATION FORCE AND PURSUANT TO SHAEF LAW NO. 52. ANY CLAIM BY THE GDR TO SOVEREIGNTY OR JURISDICTION OVER SUCH PROPERTY IS WITHOUT ANY LEGAL FOUNDATION. UNQUOTE.

6. TEXT OF PUSA/L(78)3 FOLLOWS:

QUOTE

JUNE 21, 1978

TO: POLICE PRESIDENT

SUBJECT: POLICE CONTROLS AT THE RAILWAY-STATIONS ON  
THE S-BAHN IN THE WESTERN SECTORS OF BERLIN

DEAR HERR HUEBNER:

1. AWARE OF THE PROBLEMS IMPOSED TO THE POLICE OF THE WESTERN SECTORS OF BERLIN BY THE POSSIBILITIES OFFERED TO THE DELINQUENTS BY UTILIZATION OF THE S-BAHN WITHOUT GREAT RISKS, THE PUBLIC SAFETY COMMITTEE HAS DECIDED, BY APPLICATION OF PARAGRAPHS 1 AND 2 OF BK/O(62)6, TO GIVE TO THE POLICE MENTIONED ABOVE THE PERMANENT AUTHORIZATION

CONFIDENTIAL

CONFIDENTIAL

PAGE 03 USBERL 02038 02 OF 02 290943Z

TO ACT IN THE DOMAIN UTILIZED BY AND IN THE COMPARTMENTS OF THE S-BAHN IN THE WESTERN SECTORS OF BERLIN.

2. HOWEVER, THIS AUTHORIZATION IS SUBMITTED UNDER THE FOLLOWING CONDITIONS:

A. THAT THE ACTIONS OR CONTROLS HAVE NOT A SYSTEMATIC CHARACTER AND ARE DECIDED ONLY IN FUNCTION OF THE NECESSITIES OF THE SITUATION.

B. THAT THE ACTIONS OR CONTROLS ARE NOT AT THE IMMEDIATE PROXIMITY OF THE BORDER OF THE SOVIET SECTOR - OR ONLY VERY EXCEPTIONALLY AND THAT THE INTERESTED PUBLIC SAFETY ADVISER IS INFORMED PREVIOUSLY.

C. THAT THE PUBLIC SAFETY ADVISERS ARE STRICTLY INFORMED:

- PRIORITY - OF THE ENVISAGED EXTENT OF THE OPERATION

- POSTERIORITY - OF THE RESULTS OF ALL ACTIONS

- IMMEDIATELY - OF ALL INCIDENTS OR PROBLEMS WHICH HAPPEN OR COULD HAPPEN

D. THAT THE RESTRICTIONS STATED IN PARAGRAPH 2 OF BK/O(62)6 ARE EQUALLY RESPECTED.

3. A TOTAL REPORT, CONCERNING THE RESULTS OF THE OPERATIONS THE POLICE HAS BEEN EXECUTING IN THIS DOMAIN, HAS TO BE ADDRESSED AT THE END OF EACH QUARTER TO THE PUBLIC SAFETY COMMITTEE.

CONFIDENTIAL

CONFIDENTIAL

PAGE 04 USBERL 02038 02 OF 02 290943Z

4. THE PARAGRAPH 1(B) OF PUSA/L(74)3 IS CANCELLED.

SINCERELY YOURS,

A. VAGNEUX

CHAIRMAN

PUBLIC SAFETY COMMITTEE

UNQUOTE.

7. COMMENT. WE TREATED THIS QUESTION FROM THE START AS A LOCAL BERLIN MATTER. HOWEVER, FCO UNDER-SECRETARY HIBBERT HAS HIMSELF BECOME INVOLVED (TO THE DISMAY OF BRITISH OFFICIALS HERE) SO THAT THIS LASTEST OF MANY SUCH EXCHANGES ON S-BAHN AND REICHSBAHN QUESTIONS MAY BE RAISED BY THE BRITISH IN THE BONN GROUP. NELSON

CONFIDENTIAL

NNN

## Message Attributes

**Automatic Decaptoning:** X  
**Capture Date:** 01 jan 1994  
**Channel Indicators:** n/a  
**Current Classification:** UNCLASSIFIED  
**Concepts:** DIPLOMATIC PROTESTS  
**Control Number:** n/a  
**Copy:** SINGLE  
**Draft Date:** 29 aug 1978  
**Decaption Date:** 01 jan 1960  
**Decaption Note:**  
**Disposition Action:** RELEASED  
**Disposition Approved on Date:**  
**Disposition Case Number:** n/a  
**Disposition Comment:** 25 YEAR REVIEW  
**Disposition Date:** 20 Mar 2014  
**Disposition Event:**  
**Disposition History:** n/a  
**Disposition Reason:**  
**Disposition Remarks:**  
**Document Number:** 1978USBERL02038  
**Document Source:** CORE  
**Document Unique ID:** 00  
**Drafter:** n/a  
**Enclosure:** n/a  
**Executive Order:** X1  
**Errors:** N/A  
**Expiration:**  
**Film Number:** D780352-0480  
**Format:** TEL  
**From:** USBERLIN  
**Handling Restrictions:** n/a  
**Image Path:**  
**ISecure:** 1  
**Legacy Key:** link1978/newtext/t19780811/aaaaaiyy.tel  
**Line Count:** 274  
**Litigation Code IDs:**  
**Litigation Codes:**  
**Litigation History:**  
**Locator:** TEXT ON-LINE, ON MICROFILM  
**Message ID:** d4a61759-c288-dd11-92da-001cc4696bcc  
**Office:** ACTION EUR  
**Original Classification:** CONFIDENTIAL  
**Original Handling Restrictions:** n/a  
**Original Previous Classification:** n/a  
**Original Previous Handling Restrictions:** n/a  
**Page Count:** 5  
**Previous Channel Indicators:** n/a  
**Previous Classification:** CONFIDENTIAL  
**Previous Handling Restrictions:** n/a  
**Reference:** 78 USBERLIN 1699  
**Retention:** 0  
**Review Action:** RELEASED, APPROVED  
**Review Content Flags:**  
**Review Date:** 20 may 2005  
**Review Event:**  
**Review Exemptions:** n/a  
**Review Media Identifier:**  
**Review Release Date:** n/a  
**Review Release Event:** n/a  
**Review Transfer Date:**  
**Review Withdrawn Fields:** n/a  
**SAS ID:** 1568686  
**Secure:** OPEN  
**Status:** NATIVE  
**Subject:** ALLIED REPLY TO SOVIET S-BAHN PROTEST  
**TAGS:** PGOV, UR, AKB  
**To:** STATE BONN  
**Type:** TE  
**vdkvgwkey:** odbc://SAS/SAS.dbo.SAS\_Docs/d4a61759-c288-dd11-92da-001cc4696bcc  
**Review Markings:**  
Sheryl P. Walter  
Declassified/Released  
US Department of State  
EO Systematic Review  
20 Mar 2014  
**Markings:** Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014